SUPREME COURT OF THE UNITED STATES

JAMES A. RHODES ET AL. *v.* LARRY STEWART

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 88–139. Decided October 17, 1988

JUSTICE MARSHALL, dissenting.

I continue to believe that it is unfair to litigants and damaging to the integrity and accuracy of this Court's decisions to reverse a decision summarily without the benefit of full briefing on the merits of the question decided. *Buckanan* v. *Stanships*, 485 U. S. ——, —— (1988) (MARSHALL, J., dissenting); *Commissioner* v. *McCoy*, 484 U. S. ——, —— (1987) (MARSHALL, J., dissenting); *Montana* v. *Hall*, 481 U. S. ——, —— (1987) (MARSHALL, J., dissenting).

The Rules of this Court urge litigants filing petitions for certiorari to focus on the exceptional need for this Court's review rather than on the merits of the underlying case. Summary disposition thus flies in the face of legitimate expectations of the parties seeking review by this Court and deprives them of the opportunity to argue the merits of their claim before judgment. Moreover, briefing on the merits leads to greater accuracy in our decisions and helps this Court to reduce as much as humanly possible the inevitable incidence of error in our opinions. Finally, the practice of summary disposition demonstrates insufficient respect for lower court judges and for our own dissenting colleagues on this Court.

It is my view that when the Court is considering summary disposition of a case, it should, at the very least, so inform the litigants and invite them to submit supplemental briefs on the merits. I remain unconvinced that this slight modification of our practice would unduly burden the Court. The benefits of increasing the fairness and accuracy of our decisionmaking and the value of according greater respect to our

colleagues on this and other courts more than outweighs any burden associated with such a modest accommodation.

I dissent.